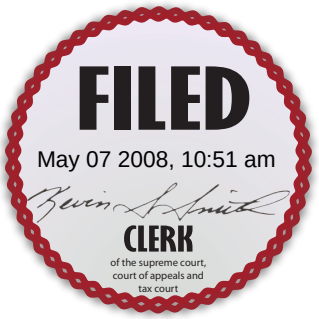

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF: The Termination of Parental Rights of MARCENA (SNAWDER) DULEY and MARCUS DOERR, the parents of K.D., D.D., and S.D., Children in Need of Services,	)	
MARCENA (SNAWDER) DULEY,	)	
Appellant-Respondent,	)	
vs.	)	No. 19A01-0802-JV-44
THE STATE OF INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE DUBOIS CIRCUIT COURT
The Honorable William E. Weikert, Judge
Cause No. 19C01-0511-JM-0215; 19C01-0706-JT-0162
19C01-0706-JT00163; 19C01-0706-JT-0164

May 7, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Marcena (Snawder) Duley appeals the involuntary termination of her parental rights as to her children, K.D., D.D., and S.D. Specifically, Duley contends that appellee-petitioner Dubois County Department of Child Services (DCS) failed to prove that there was a reasonable probability that the conditions which resulted in the children's removal or the reasons for placement will not be remedied. Finding no error, we affirm the judgment of the trial court.

FACTS

Duley and Marcus Doerr, the parents of all three children,[1] were all living in a Jasper apartment in 2004. On August 19, 2004, Duley contacted the Jasper City Police Department and reported that Doerr had been beating the children. When DCS personnel arrived at the residence, one of the police officers reported that he observed numerous bruises on K.D. and S.D. DCS personnel confirmed that the children were bruised, and the children claimed that "daddy whoops [us] with a belt." Tr. p. 176. The children were very thin and their hair was unkempt.

[1] K.D. was born on April 25, 2000, S.D. was born on November 6, 1996, and D.D. was born on February 13, 1999. Appellant's App. p. 49.

D.D. was not at the residence because Doerr had taken D.D. with him on his truck-driving route, but Duley believed that Doerr would be returning to the apartment later that evening. Duley also told DCS personnel that on the previous day, Doerr had grabbed D.D. by the head and rubbed his face in feces after D.D. had an accident that spilled from his pants.

As a result of the above circumstances, on August 20, 2004, DCS personnel obtained an emergency detention order for the removal of the children from Duley and Doerr's custody. The DCS feared that Doerr would return to the residence and continue to abuse the children. Three days later, the DCS filed a petition alleging that S.D., D.D., and K.D. were Children in Need of Services (CHINS). Doerr was also criminally charged in light of his physical abuse of the children.

At some point, it was determined that all of the children exhibited inappropriate behavior, including stealing, lying, fighting, violence, and they also suffered from attention deficit disorder (ADD). The therapists and case managers believed that many of the children's issues were the result of their home environment. Moreover, although the children were placed in foster care, they were eventually moved to a new placement because the violence and behavioral problems persisted.

The trial court ordered Duley to participate in parenting classes and therapy and to follow all recommendations made by the DCS. Duley's initial assessment revealed that she has deficits in parenting and difficulties with depression. During the time that Duley was participating in the court-ordered services, she missed seventeen of the forty-seven homemaker visits. She also cancelled or "no showed" for seven of eleven scheduled

appointments with her therapist and most of the supervised visits with the children. Tr. p. 105. However, even in light of the missed appointments and visitations, the DCS caseworkers and therapists were able to determine that Duley had extreme difficulty providing structure, supervision, and discipline of the children. Duley also struggled to maintain a home, steady employment, transportation, and finances during that time.

On November 21, 2005, the DCS filed a petition to terminate Duley and Doerr's parental rights. Although efforts were made to continue the therapy and parenting services, Duley requested in February 2006 that her counseling location and services be transferred closer to her residence. While the DCS accommodated her request, Duley failed to appear on two occasions for an initial assessment, and the agency closed her file. Duley eventually underwent an initial assessment and began to take part in counseling sessions, but she declined to attend on a regular basis. Thereafter, Duley was diagnosed with major depressive and anxiety disorders with a "borderline" personality disorder. Id. at 305. Duley's prognosis was "poor" because she had stopped attending therapy sessions. Id.

At a final hearing that was scheduled for February 13, 2007, Doerr was defaulted for failing to appear. At some point during the termination hearings, Duley admitted that she had attended only fifty percent of her visits with the children from February 2007 until July 25, 2007. Duley had changed her residence numerous times since the children were removed from her care, and she had held ten different jobs. All of the children have special needs and were diagnosed with post-traumatic stress disorder, ADD and various other significant adjustment disorders.

Following the termination hearings that concluded on July 25, 2007, the trial court subsequently ordered the termination of Duley and Doerr's parental rights as to all three children. Duley now appeals.[2]

DISCUSSION AND DECISION

In addressing Duley's claims that the DCS failed to present clear and convincing evidence that her parental rights should be terminated, we will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). We neither reweigh the evidence nor judge the credibility of witnesses, and we will consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn therefrom. Id. If the evidence and the inferences support the trial court's decision, we must affirm. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

Additionally, when the trial court has made findings of fact and conclusions of law in a parental termination case, we apply a two-tiered standard of review. Parks v. Delaware County Dep't of Child Serv's., 862 N.E.2d 1275, 1279 (Ind. Ct. App. 2007). First, we determine whether the evidence supports the findings. Id. Then, we determine whether the findings support the judgment. Id. We will not set aside the trial court's findings or judgment unless they are clearly erroneous. Id. Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference. Id. A judgment is clearly erroneous if it applies the wrong legal standard to

[2] Doerr is not a party to this appeal.

properly found facts. Id. In order to determine that a finding or conclusion is clearly erroneous, our review of the evidence must leave us with the firm conviction that a mistake has been made. Id.

We further acknowledge that the involuntary termination of parental rights is the most extreme sanction that a court can impose on a parent because termination severs all rights of a parent to his or her children. Id. Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Id. The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Id. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. Id.

Indiana Code section 31-35-2-8(a) provides that "if the court finds that the allegations in a petition described in [Indiana Code section 31-35-2-4] are true, the court shall terminate the parent-child relationship." Indiana Code section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege that:

(A) one (1) of the following exists:

> (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
>
> (ii) a court has entered a finding under Ind. Code § 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the

> court's finding, the date of the finding, and the manner in which the finding was made; or
>
> (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
>
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

The DCS must prove its allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992). Moreover, we note that in termination proceedings, the trial court should judge a parent's fitness to care for the children as of the time of the termination proceedings, taking into consideration changed conditions and the parent's habitual pattern of conduct. Knott v. Tippecanoe County Dep't of Pub. Welfare, 632 N.E.2d 752, 756 (Ind. Ct. App. 1994). Additionally, the trial court must examine the patterns of conduct in which the parent has historically engaged in order to determine if future changes are likely to occur. In re

Involuntary Termination of Parent Child Relationship of D.L., 814 N.E.2d 1022, 1028 (Ind. Ct. App. 2004).

In this case, Duley claims that the termination order must be set aside because the evidence established that it was Doerr who had abused the children and the services that she was ordered to complete were not related to the removal of the children. Notwithstanding this contention, Duley's initial assessment revealed that her parenting skills are deficient and she is severely depressed. Tr. p. 103. As noted above, even though Duley was ordered to participate in a variety of DCS services, she missed many of her therapist and homemaker appointments. Id. at 105. Moreover, Duley participated in only four of the thirty supervised visits. Id. at 108. Notwithstanding these missed appointments and visits with her children, DCS personnel were able to conclude that Duley "had difficulties providing for structure, supervision and discipline of the children." Id. Moreover, she "struggled to maintain a home, job, transportation, commitments, and finances during that time. . . ." Id.

The initial assessment at Southern Hills Counseling Center (Southern Hills) revealed that Duley is deficient with regard to her parenting skills and experiences symptoms of depression. Id. at 103. The staff at Southern Hills determined that Duley was not able to provide and supply the necessary environment for the mental and physical well being of the children. Id. at 112, 113. Even after transferring to another facility that was closer to her residence, Duley failed to appear on two occasions for an initial assessment. Id. at 211-12. Although Duley eventually attended some of the counseling sessions, she eventually stopped. Id. at 305, 310. One of the counselors testified that

Duley needed continued therapy to work on being able to attend sessions on a regular basis, develop a therapeutic relationship, discuss triggers to her increased depression and anxiety, and develop coping skills. Id. at 303. Duley's therapist testified that the depressive disorder could prevent Duley from caring for the children, obtaining a suitable residence, and maintaining employment and personal relationships. Id. at 306. Also, further psychological testing revealed that Duley is "an untrustworthy, unreliable individual who rejects obligations and does not attempt to follow societal norms." Appellant's App. p. 905.

Duley attended only fifty percent of her visits with the children from February 2007 until July 25, 2007. Norberta Bullock, a caseworker assigned to assist Duley with her parenting skills, testified that the majority of those visits were "bad," and that visitation was never increased in light of Duley's parenting and discipline problems. Bullock observed that the children were "out of control during visits." Tr. p. 143, 144. It was also established that Duley demonstrated only a minimal understanding of the needs and limitations of the children. In particular, Duley did not believe that the children have the conditions that were diagnosed. When Duley was asked if she agreed with the diagnoses, she responded, "Uh . . . I'm sure that they have problems. I do not think that their problems necessarily are from all the diagnoses that they have given them." Id. at 288.

In sum, the record is replete with evidence that Duley did not comply with the court-ordered services. She moved a number of times and held many different jobs throughout the CHINS and termination of parental rights proceedings. It is apparent that

the children could be in danger if they were placed with Duley. Although Duley may have demonstrated that she cared about her the children, the evidence established that she was simply unable to provide a safe and stable environment for them. Hence, the trial court reasonably concluded, based on the evidence presented, that there was a reasonable probability that the conditions which resulted in the children's removal would not be remedied. In effect, Duley's claims amount to an invitation to reweigh the evidence—an invitation that we decline. Thus, we conclude that the trial court's decision to terminate Duley's parental rights as to S.D., D.D., and K.D. was not clearly erroneous.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.